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rrwilson@atlanticbnn.net

851 Twelfth Street  
Oakmont, PA 15139

NOV 22 '04  
RECEIVED

Of Counsel to:  
Vuono & Gray LLC  
2310 Grant Building  
Pittsburgh, PA 15219  
(412) 471-1800  
(412) 471-4477 FAX

November 17, 2004

Hon. Vernon A. Williams, Secretary  
Surface Transportation Board  
Mercury Bldg., #711  
1925 K Street, N.W.  
Washington, D.C. 20423-0001

212590  
ENTERED  
Office of Proceedings

NOV 22 2004

Part of  
Public Record

RE: Finance Docket No. AB-167 (Sub No. 1095X); Consolidated Rail Corporation –  
Abandonment Exemption- Lancaster and Chester Counties, PA

Dear Secretary Williams:

I have been retained by Lancaster County to aid the County in its acquisition of the Enola Branch for recreational trail purposes. On June 16, 2004, the County filed a declaration of taking in the Common Pleas Court of Lancaster County, Pennsylvania at Civil Index – 04-05422. In order to facilitate that condemnation proceeding, Lancaster County has filed the original and ten copies of the enclosed Motion to Remove Historic Preservation Conditions and to Grant Final Abandonment Authority to Norfolk Southern Corporation in order to terminate STB jurisdiction in the above captioned proceeding.

As set forth in the enclosed motion, Lancaster County has agreed to undertake historic preservation activities required under the terms of the Memorandum of Understanding executed by various parties in this proceeding thereby assuring that the historic review and preservation goals of that MOU will be observed in accordance with the National Historic Preservation Act.

To the extent that this motion is deemed to constitute a pleading requiring the payment of a filing fee under the Board's regulations at 49 C.F.R. §1002, Lancaster County respectfully

Vernon A. Williams  
Page 2  
November 17, 2004

requests that the Board waive any filing fee in as much as Lancaster County is a local governmental entity for purposes of the Board's filing fee waiver provision.

Copies of this motion have been served on all parties of record.

Very truly yours,

RICHARD R. WILSON, P.C.

A handwritten signature in black ink, appearing to read 'Richard R. Wilson', with a long, sweeping horizontal stroke extending to the right.

Richard R. Wilson, Esq.

RRW/bab  
Enclosures

xc: Lancaster County  
All Parties of Record

212540

Before the

SURFACE TRANSPORTATION BOARD

NOV 22 2004  
RECEIVED

FINANCE DOCKET NO. AB-167 (Sub No. 1095X)

CONSOLIDATED RAIL CORPORATION – ABANDONMENT EXEMPTION –  
LANCASTER AND CHESTER COUNTIES, PA

MOTION TO REMOVE HISTORIC PRESERVATION CONDITIONS AND TO  
GRANT ABANDONMENT AUTHORITY

RICHARD R. WILSON, ESQ.  
Attorney for Lancaster County

Richard R. Wilson, P.C.  
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Ste. 100  
Altoona, PA 16601  
(814) 944-5302  
(814) 944-6978 FAX  
rrwilson@atlanticbbn.net

ENTERED  
Office of Proceedings

NOV 22 2004

Part of  
Public Record

Dated: November 17, 2004

Before the  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. AB-167 (Sub-No. 1095X)

CONSOLIDATED RAIL CORPORATION – ABANDONMENT EXEMPTION-  
LANCASTER AND CHESTER COUNTIES, PA

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MOTION TO REMOVE HISTORIC PRESERVATION CONDITIONS AND TO  
GRANT ABANDONMENT AUTHORITY

On August 5, 2004, the STB Section of Environmental Analysis (“SEA”) wrote to Lancaster County and advised that SEA had completed its review of Conrail’s proposed abandonment exemption in Lancaster and Chester Counties pursuant to §106 of the National Historic Preservation Act (“NHPA”) and had adopted a final Memorandum of Agreement (“MOA”) for historic preservation measures. (Exhibit A) Under the MOA, Norfolk Southern (“NS”) agreed to undertake additional documentation as part of this abandonment proceeding in order to fully comply with the NHPA requirements in accordance with Friends of the Atglen-Susquehanna Trail, Inc. v. Surface Transportation Board, 252 F.3d 246 (3d Cir. 2001).

In particular the MOA states “assuming that no arrangements for interim trail use/rail banking is reached, completion of the mitigation phase of the Section 106 process by execution and implementation of this Memorandum of Agreement is appropriate.” The MOA also indicates that “based on consultation with the ACHP and the SHPO and the public comments, SEA has determined that the abandonment at issue here would adversely effect the Enola Branch...” The MOA then describes the various additional measures devised by SEA to mitigate the adverse effects to the Enola Branch that would be caused by the abandonment of the rail line.

The purpose of this Motion is to advise the Surface Transportation Board (“STB”) and the SEA that on June 16, 2004, Lancaster County filed a Declaration of Taking in the Common Pleas

Court of Lancaster County, Pennsylvania at CI-04-05422 to acquire fee simple absolute title in approximately 930.2 acres of land comprising the Enola Branch record title to which is held by Pennsylvania Lines, LLC, with equitable title to the property being held by NS by virtue of various operating agreements between Pennsylvania Lines, LLC, Consolidated Rail Corporation and NS. A copy of the filed Declaration of Taking is attached hereto as Exhibit B. The purpose of the condemnation proceeding is for the County to acquire the Enola Branch to construct and maintain a recreational trail on the right of way. Copies of this Declaration of Taking were served on all railroad parties and on various townships and local municipalities which by virtue of agreements with Consolidated Rail Corporation and/or NS may have equitable interests or contractual rights affected by the Declaration of Taking.

In light of Lancaster County's decision to use its powers of eminent domain to acquire and preserve the Enola Branch for recreational trail purposes, the additional documentation and historic preservation requirements adopted in this proceeding under the MOA are no longer necessary or required. Lancaster County will acquire the Enola Branch and undertake its administration and preservation for recreational purposes as a county park thereby avoiding the adverse effects to the Enola Branch that would otherwise be caused by its abandonment as a common carrier rail facility. Moreover, in the County's response to preliminary objections filed by Pennsylvania Lines, LLC, and NS, the County has agreed to undertake historic preservation activities required under the terms of the MOA and any resulting STB order. (Exhibit C, Paragraph 9, Page 2) Thus the historic review and preservation goals of the MOA will be observed by Lancaster County in accordance with NHPA.

In response to Lancaster County's Declaration of Taking, NS and Pennsylvania Lines, LLC in their preliminary objections have asserted that since the Section 106 process has not been finalized in accordance with the MOA the STB may still exercise preemptive jurisdiction under 49

U.S.C. §10501(d) which might preclude the exercise of condemnation authority by the Common Pleas Court of Lancaster County. Lancaster County believes that such a position is without merit given the fact that the STB has already determined that abandonment of the line is in the public interest and rail service has long been terminated on the Enola Branch. Moreover, since the Board's abandonment jurisdiction is being exercised solely for the purpose of historic preservation under §106 of NHPA, there is no conflict between the regulatory functions of the STB with regard to historic preservation and the condemnation processes of state law being used by Lancaster County to acquire and preserve the Branch. State laws that do not impose unreasonable burdens on common carrier rail operations or interfere with the STB's jurisdiction are not preempted. State of Texas DOT – Pet. For Decl. Order – Highway Const. in Tarrant Cty., Finance Docket 32589, 1995 ICC Lexis 14 (1995). Moreover, STB jurisdiction can not be used to shield a carrier from the legitimate processes of state law where there is no overriding federal interest in interstate commerce in a state condemnation or quiet title action. Modern Handcraft, Inc., 363 ICC 969, 972 (1981).

However, in an abundance of caution and to coordinate and accommodate the respective jurisdictions of the STB and the Pennsylvania courts, Lancaster County respectfully requests that the Board, in recognition of the actions and commitments undertaken by Lancaster County in connection with its Declaration of Taking, remove the historic preservation conditions imposed on NS under the MOA and grant NS abandonment authority in Docket No. AB-167(1095X) on the condition that NS promptly file a Notice of Consummation with the Board thereby terminating the Board's jurisdiction in this docket.

Granting this motion will facilitate Lancaster County's Declaration of Taking by eliminating any possible conflict with the Board's administrative jurisdiction. See Hayfield N. R.R. v. Chicago & N.W. Transp., 467 U.S. 622, 634 (1984). It would also avoid further time consuming and expensive litigation of the preemption issue. It will also assure that the Enola Branch is acquired and

preserved by Lancaster County for recreational purposes and will satisfy the various historic preservation goals of the MOA. Finally, it will terminate an extremely prolonged abandonment proceeding.

The interests of all parties, including those townships and local municipalities which are signatories to agreements with Consolidated Rail Corporation, are most appropriately dealt with under state law in the condemnation proceeding instituted by Lancaster County. Similarly, issues pertaining to the preservation or removal of various grade separated crossing structures can best be addressed by the parties or before the Pennsylvania Public Utility Commission in light of the decision by Lancaster County to acquire ownership of those structures through its Declaration of Taking.

Finally, the request by Lancaster County for the Board to grant conditional abandonment authority that requires NS to promptly consummate the abandonment authorization ensures that there will be a timely and definitive termination of STB jurisdiction. This condition is also consistent with the Board's most recent decision of June 2, 2004 which noted that

the parties could enter a private agreement to create a recreational trail. However, such an arrangement would not involve this agency because the line would no longer be subject to the Board's jurisdiction.

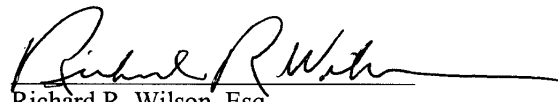
The private agreements between various townships and local municipalities and Consolidated Rail Corporation, which are binding on NS, hinder the possibility of a private agreement between the County and NS to create a unified, County owned recreational trail. However, through its Declaration of Taking Lancaster County can ensure that all parties are appropriately compensated, that the Enola Branch is preserved as a public recreational trail for future generations and that the Branch will be owned and administered in its entirety by Lancaster County notwithstanding prior private contractual arrangements between various parties.

WHEREFORE, Lancaster County respectfully states that given the commencement of its condemnation proceeding and its commitment to undertake historic preservation activities assigned to NS under the MOA, there is no further purpose to be served by prolonging this abandonment proceeding. Accordingly, Lancaster County respectfully requests the Board to rescind the historic preservation conditions required by the MOA and grant abandonment authority to NS subject to the sole condition that NS promptly file a Notice of Consummation following the service date of the Board's Order together with such other relief as the Board deems appropriate.

Respectfully submitted,

RICHARD R. WILSON, P.C.

By:

A handwritten signature in black ink, appearing to read "Richard R. Wilson", written over a horizontal line.

Richard R. Wilson, Esq.

Attorney for Lancaster County



***SURFACE TRANSPORTATION BOARD***

Washington, DC 20423

Office of Economics, Environmental Analysis, and Administration

August 5, 2004

Lancaster County  
Office of the County Commissioners  
Howard "Pete" Schaub, Molly S. Henderson, and Dick Schellenberger  
P.O. Box 83480  
50 North Duke Street  
Lancaster, PA 17608-3480

**Re: Docket No. AB - 167 (1095X), Consolidated Rail Corporation -  
Abandonment Exemption - in Lancaster and Chester Counties,  
Pennsylvania**

Dear Mr. Schaub, Ms. Henderson, and Mr. Schellenberger:

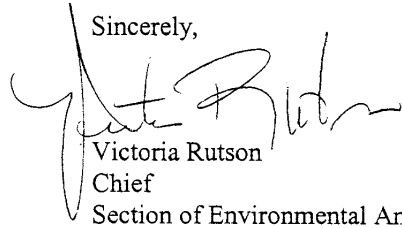
As you know, the Surface Transportation Board's Section of Environmental Analysis (SEA) has completed its review of Consolidated Rail Corporation's proposed abandonment exemption in Lancaster and Chester Counties, Pennsylvania, pursuant to Section 106 of the National Historical Preservation Act. On April 12, 2004, SEA sent copies of the Final Memorandum of Agreement (MOA) for signature to the signatory and concurring parties.

Pursuant to 36 CFR 800.6(c)(9), and as requested by the Advisory Council on Historic Preservation, SEA is providing the signatory and concurring parties with a copy of the executed Final MOA, which has been signed by our office, the ACHP, the Pennsylvania Historical and Museum Commission (the State Historic Preservation Office), the railroad, and the Townships of Martic, Providence, and Sadsbury. The Final MOA demonstrates the Board's compliance with Section 106 under the regulations of the ACHP. [See 36 CFR 800.6(c)].

The executed Final MOA is also available on the Board web site at "WWW.STB.DOT.GOV," if you need additional copies. If you have questions regarding the Final MOA or require further information, please do not hesitate to contact me or Troy Brady at (610) 793-4301.

EXHIBIT A

Sincerely,



Victoria Rutson

Chief

Section of Environmental Analysis

Enclosure

cc: Advisory Council on Historic Preservation  
Pennsylvania Historical and Museum Commission, Bureau for Historic Preservation  
Norfolk Southern Railway Company  
Friends of the Atglen-Susquehanna Trail  
Historic Preservation Trust of Lancaster County  
Lancaster County  
Lancaster County Conservancy  
Lancaster Farmland Trust  
Northeast Regional Field Office of the Rails-to-Trails Conservancy  
Pennsylvania Department of Transportation  
Quarryville Borough  
Southern End Community Association  
Township of Bart  
Township of Conestoga  
Township of Eden  
Township of Martic  
Township of Providence  
Township of Sadsbury  
Township of West Sadsbury  
SEA Chron

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW

IN RE:

CONDEMNATION BY THE COUNTY  
OF LANCASTER, LANCASTER COUNTY,  
PENNSYLVANIA, OF AN APPROXIMATE  
930.2 ACRES OF LAND WITH  
IMPROVEMENTS THEREON SITUATED  
AT LANCASTER COUNTY, PENNSYLVANIA  
FOR THE PURPOSE OF USE AS PARK AND  
RECREATION LAND  
(Property of Pennsylvania Lines, LLC)

No.:  
CI-04-0542  
Proceedings in Rem and  
Eminent Domain

ENTERED AND FILED  
04 JUN 16 PM 2:20  
PROthonary's OFFICE  
LANCASTER, PA

**DECLARATION OF TAKING**

1. Condemnor is the County of Lancaster, a political subdivision organized and existing as a county of the third class under the laws of the Commonwealth of Pennsylvania, with its offices located at 50 North Duke Street, Lancaster, Pennsylvania 17602. For the purposes of these proceedings, the mailing address of the County is c/o Nikolaus & Hohenadel, LLP, 212 North Queen Street, Lancaster, Pennsylvania 17603.

2. The condemnation referred to in this Declaration of Taking is authorized by the Eminent Domain Code, Act of June 22, 1964, P.L. 84, as amended, 26 P.S. §1-101 et seq.

3. This Declaration of Taking was authorized by Resolution Number 55 of 2004 of the Board of Commissioners of Lancaster County, adopted on June 16, 2004. A copy of said resolution may be examined at the Condemnor's office located at 50 North Duke Street, Lancaster, Pennsylvania 17602.

4. The purpose of the condemnation is for Condemnor to obtain title to the subject premises for use as park and recreation land.

EXHIBIT B

5. The property subject to this Declaration of Taking is located in Lancaster County, Pennsylvania and consists of approximately 930.2 acres of land, being part of the lands more fully described in the Quitclaim Deed by and between Consolidated Rail Corporation and Pennsylvania Lines, LLC, dated May 19, 1999 and recorded in the Office of the Recorder of Deeds for Lancaster County at Volume 6403 Page 0001.

6. The property to be condemned extends from the Lancaster/Chester County line in a westerly direction generally to Brenner Hollow Road, Conestoga Township, Lancaster County, PA, as depicted on the parcel maps for the property attached to the above-referenced Deed and recorded in the Office of the Recorder of Deeds for Lancaster County at Volume 6403 Pages 91 through 113, but excluding therefrom Pennsylvania Lines LLC's Main Line which is described in part on pages 112 and 113 of the herein referenced Deed.

7. A Notice of the filing of this Declaration of Taking is being filed concurrently, in the office of the Recorder of Deeds in and for Lancaster County, Pennsylvania, on the same day as the Declaration of Taking is filed in the Office of the Prothonotary of the Court of Common Pleas of Lancaster County, Pennsylvania.

8. Record title to the property is held by Pennsylvania Lines, LLC and equitable title to the property is held by Norfolk Southern Corporation by virtue of certain operating agreements between Pennsylvania Lines, LLC, Consolidated Rail Corporation and Norfolk Southern Company.

9. Norfolk Southern has sought approval from the appropriate governmental agencies for leave to abandon the rail lines which are the subject of these condemnation proceedings.

10. There is no public use to which the land is being put at this time except the location of utility lines used by Amtrak and which are visible upon the property sought to be condemned.

11. The following municipal corporations may have an interest in the property by reason of a Stipulation of Settlement dated February 25, 1997 between Consolidated Rail Corporation and the municipalities in proceedings before the Commonwealth of Pennsylvania Public Utility Commission in the matter of Application of Consolidated Rail Corporation, Docket No. A-00111016, and the matter of Board of Supervisors of Bart Township v. Consolidated Rail Corporation, Docket No. C-00913256:

Sadsbury Township  
1077 White Oak Road  
Christiana, PA 17509

Eden Township  
489 Stoney Hill Road  
Quarryville, PA 17566

Bart Township  
46 Quarry Road  
Quarryville, PA 17566

Providence Township  
200 Mount Airy Road  
New Providence, PA 17560

Martic Township  
370 Steinman Farm Road  
Pequea, PA 17565

Conestoga Township  
PO Box 98  
Conestoga, PA 17516

12. The nature of the title acquired by Condemnor as a result of this condemnation is fee simple absolute for purpose of use as park and recreation land.

13. A plan showing the condemned portion of the property may be inspected at the offices of the Condemnor located at 50 North Duke Street, Lancaster, Pennsylvania 17602.

14. The Condemnor has the power of taxation, and funds raised, or lawful to be raised, by the power of taxation or pledged to security to the parties in interest for the payment of such amount of damages as the said parties and interest may be entitled to receive, after the sum shall either have been agreed upon or assessed in a manner provided by law.

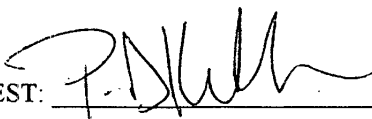
15. The property subject to these condemnation proceedings is of no value or can be deemed a liability and has been so determined in proceedings before the Public Utility Commission for the Commonwealth of Pennsylvania for the approval of the abandonment of the line.

16. Norfolk Southern has sought permission to abandon the rail line for no compensation and in fact has acknowledged and affirmed the absence of any value and the existence of the liability on the property by agreeing by virtue of its agreement to pay to the municipalities the sum of \$1.4 million upon approval of the abandonment.

17. The payment of just compensation, if appropriate in this matter, is secured by the County's power of taxation.

WHEREFORE, we, the undersigned Commissioners of the County of Lancaster, do hereby depose, swear and affirm that we are authorized by and do hereby execute this Declaration of Taking on behalf of the County of Lancaster and that the averments contained and set forth herein are true and correct to the best of our knowledge, information and belief, and are made subject to the penalties provided in 18 Pa. C.S. §4904, relating to false swearing to authorities.

WHEREFORE, fee simple absolute title is hereby condemned from the property of  
Pennsylvania Lines, LLC as identified in this Declaration of Taking.

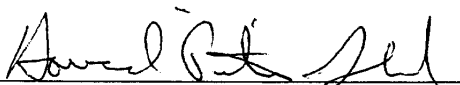
ATTEST: 

Acting Chief Clerk

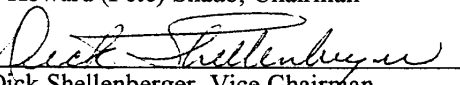
ATTEST: \_\_\_\_\_

ATTEST: \_\_\_\_\_

County of Lancaster, Lancaster County  
Pennsylvania



Howard (Pete) Shaub, Chairman



Dick Shellenberger, Vice Chairman



Molly Henderson, Commissioner

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW

IN RE:

CONDEMNATION BY THE COUNTY  
OF LANCASTER, LANCASTER COUNTY,  
PENNSYLVANIA, OF AN APPROXIMATE  
930.2 ACRES OF LAND WITH  
IMPROVEMENTS THEREON SITUATED  
AT LANCASTER COUNTY, PENNSYLVANIA  
FOR THE PURPOSE OF USE AS PARK AND  
RECREATION LAND  
(Property of Pennsylvania Lines LLC)

No.:

Proceedings in Rem and  
Eminent Domain

Index as:

Grantors: Pennsylvania Lines, LLC

Grantee: County of Lancaster

**NOTICE TO CONDEMNEE OF FILING OF DECLARATION OF TAKING**

TO: Pennsylvania Lines, LLC

You are hereby notified that a Declaration of Taking was filed on June 16, 2004, in the Office of the Prothonotary of the Court of Common Pleas of Lancaster County, Pennsylvania, Docket Number CI-04-05422. A copy of the Declaration of Taking is attached hereto as Exhibit "A" and made a part hereof, and all of the statements and information contained in the Declaration of Taking are incorporated in this Notice.

The Declaration of Taking condemned your property. A description of the nature, extent, and purpose of the condemnation is set forth in the Declaration of Taking.

You are hereby further notified that if you wish to challenge the power or the right of the County of Lancaster to appropriate the condemned property, and right, title or interest you may have therein, the procedure followed by the County of Lancaster of the Declaration of Taking,

RECORDED & INDEXED  
LANCASTER, PA.  
04 JUN 16 PM 2:31



you are required to file Preliminary Objections within thirty days after service of this Notice. All defenses and objections not so presented are waived.

Respectfully submitted,

NIKOLAUS & HOHENADEL, LLP

Date: 10/16/04

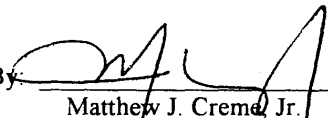
By:   
Matthew J. Crema, Jr.  
Attorney I.D. #32141  
Bernadette M. Hohenadel  
Attorney I.D. #28330  
212 North Queen Street  
Lancaster, PA 17603  
717-299-3726  
Attorneys for Condemnor  
County of Lancaster

EXHIBIT A

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW

IN RE:

CONDEMNATION BY THE COUNTY  
OF LANCASTER, LANCASTER COUNTY,  
PENNSYLVANIA, OF AN APPROXIMATE  
930.2 ACRES OF LAND WITH  
IMPROVEMENTS THEREON SITUATED  
AT LANCASTER COUNTY, PENNSYLVANIA  
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No.:

Proceedings in Rem and  
Eminent Domain

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5. The property subject to this Declaration of Taking is located in Lancaster County, Pennsylvania and consists of approximately 930.2 acres of land, being part of the lands more fully described in the Quitclaim Deed by and between Consolidated Rail Corporation and Pennsylvania Lines, LLC, dated May 19, 1999 and recorded in the Office of the Recorder of Deeds for Lancaster County at Volume 6403 Page 0001.

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8. Record title to the property is held by Pennsylvania Lines, LLC and equitable title to the property is held by Norfolk Southern Corporation by virtue of certain operating agreements between Pennsylvania Lines, LLC, Consolidated Rail Corporation and Norfolk Southern Company.

9. Norfolk Southern has sought approval from the appropriate governmental agencies for leave to abandon the rail lines which are the subject of these condemnation proceedings.

10. There is no public use to which the land is being put at this time except the location of utility lines used by Amtrak and which are visible upon the property sought to be condemned.

11. The following municipal corporations may have an interest in the property by reason of a Stipulation of Settlement dated February 25, 1997 between Consolidated Rail Corporation and the municipalities in proceedings before the Commonwealth of Pennsylvania Public Utility Commission in the matter of Application of Consolidated Rail Corporation, Docket No. A-00111016, and the matter of Board of Supervisors of Bart Township v. Consolidated Rail Corporation, Docket No. C-00913256:

Sadsbury Township  
1077 White Oak Road  
Christiana, PA 17509

Eden Township  
489 Stoney Hill Road  
Quarryville, PA 17566

Bart Township  
46 Quarry Road  
Quarryville, PA 17566

Providence Township  
200 Mount Airy Road  
New Providence, PA 17560

Martic Township  
370 Steinman Farm Road  
Pequea, PA 17565

Conestoga Township  
PO Box 98  
Conestoga, PA 17516

12. The nature of the title acquired by Condemnor as a result of this condemnation is fee simple absolute for purpose of use as park and recreation land.

13. A plan showing the condemned portion of the property may be inspected at the offices of the Condemnor located at 50 North Duke Street, Lancaster, Pennsylvania 17602.

14. The Condemnor has the power of taxation, and funds raised, or lawful to be raised, by the power of taxation or pledged to security to the parties in interest for the payment of such amount of damages as the said parties and interest may be entitled to receive, after the sum shall either have been agreed upon or assessed in a manner provided by law.

15. The property subject to these condemnation proceedings is of no value or can be deemed a liability and has been so determined in proceedings before the Public Utility Commission for the Commonwealth of Pennsylvania for the approval of the abandonment of the line.

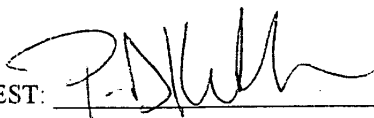
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17. The payment of just compensation, if appropriate in this matter, is secured by the County's power of taxation.

WHEREFORE, we, the undersigned Commissioners of the County of Lancaster, do hereby depose, swear and affirm that we are authorized by and do hereby execute this Declaration of Taking on behalf of the County of Lancaster and that the averments contained and set forth herein are true and correct to the best of our knowledge, information and belief, and are made subject to the penalties provided in 18 Pa. C.S. §4904, relating to false swearing to authorities.

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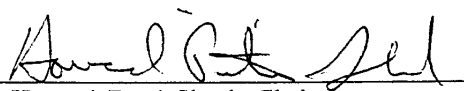
County of Lancaster, Lancaster County  
Pennsylvania

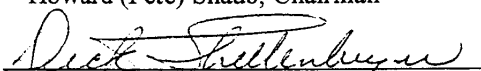
ATTEST: 

Acting Chief Clerk

ATTEST: \_\_\_\_\_

ATTEST: \_\_\_\_\_

  
Howard (Pete) Shaub, Chairman

  
Dick Shellenberger, Vice Chairman

  
Molly Henderson, Commissioner

Matthew J. Creme, Esquire  
NIKOLAUS & HOHENADEL, LLP  
212 North Queen Street  
Lancaster, PA 17603  
(717) 299-3726 FAX (717) 299-1811  
E-mail: [mjcreme@nikolaushohenadel.com](mailto:mjcreme@nikolaushohenadel.com)  
Attorney I.D. No. 32141  
*Attorney for County of Lancaster*

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

IN RE: :  
  
CONDEMNATION BY THE COUNTY :  
OF LANCASTER, LANCASTER COUNTY, :  
PENNSYLVANIA. OF AN APPROXIMATE : No. CI-04-05422  
930.2 ACRES OF LAND WITH :  
IMPROVEMENTS THEREON SITUATED : Proceedings in Rem  
AT LANCASTER COUNTY, PENNSYLVANIA : and Eminent Domain  
FOR THE PURPOSE OF USE AS A PARK AND :  
RECREATION LAND :  
(Property of Pennsylvania Lines, LLC) :

**RESPONSE OF COUNTY OF LANCASTER TO PRELIMINARY OBJECTIONS OF  
PENNSYLVANIA LINES LLC. CONDEMNEE TO DECLARATION OF TAKING**

The County of Lancaster, by and through its undersigned attorneys, hereby submits this  
response to the Preliminary Objections to Declaration of Taking filed by Pennsylvania Lines, LLC  
(hereinafter "PRR") and Norfolk Southern Railway Company (hereinafter "NS").

1. Admitted.

2. Admitted.

3.- 8. Admitted that proceedings are have been instituted, and that some are still  
pending, before federal and state administrative agencies. These paragraphs detail various aspects



of these pending administrative proceedings to which Lancaster County was not or is not yet a party and hence, no response is required.

9. To the best of the County's knowledge, the Section 106 proceedings are still pending in certain respects before the Surface Transportation Board (hereinafter "STB"). It is averred that a Memorandum of Agreement providing for certain efforts to be made to mitigate the impact of the abandonment on historic structures along the trail has been circulated among the signatory parties to the STB proceedings, and has been executed by at least three if not all four signatory parties. It is further averred that the County has initiated steps to become a party to and be substituted for NS in the STB proceedings and has agreed to assume all responsibilities of NS under the terms of the Memorandum of Agreement and any resulting STB orders.

10. This paragraph states conclusion of law to which no response is required. The jurisdictional authority of the STB is as expressed in the applicable statutes and regulations which speak for themselves.

11. This paragraph states conclusions of law to which no response is required. The jurisdictional authority of the STB is as expressed in the applicable statutes and regulations which speak for themselves.

12. This paragraph states conclusions of law to which no response is required. The jurisdictional authority of the STB is as expressed in the applicable statutes and regulations which speak for themselves. It is averred that the County can be substituted for NS in the STB abandonment proceedings to carry out the responsibilities of NS with respect to the historic structures along the Enola Line.

13. This paragraph states conclusions of law to which no response is required. It is further averred that PRR did give consent to the condemnation of the property by the County.

14. This paragraph states conclusions of law to which no response is required. The jurisdictional authority of the STB is as expressed in the applicable statutes and regulations which speak for themselves.

15. This paragraph states conclusions of law to which no response is required. The scope of the jurisdiction of the STB is a matter determined by applicable statutes and regulations, which speak for themselves.

16. This paragraph states conclusions of law to which no response is required. The decision to stay these proceedings as requested by NS is a matter subject to the determination of the Court.

17. This paragraph states conclusions of law to which no response is required. The County has not and has no intent to acquire by eminent domain any active portion of the Enola Line. The county believes and therefore avers that the description of the property subject to the condemnation proceedings is as contained in the legal documents referred to and incorporated into the Declaration of Taking.

18. This paragraph states conclusions of law to which no response is required. The jurisdictional authority of the Pennsylvania Public Utility Commission (hereinafter "PUC") is as provided in applicable statutes and regulations. The County intends to seek authority to step in to the position of NS/PRR/Conrail in any proceedings before the PUC and to carry out the obligations of those entities as determined by the PUC.

19. This paragraph refers to pending administrative proceedings and no response is required. However, it is admitted that an application was filed with and is pending before the PUC.

20. It is admitted that Conrail entered into Stipulations of Settlement with the Municipalities and with the Department of Transportation concerning the disposition and maintenance of the bridges and crossings. The legal impact of such Stipulations on the pending proceedings is a matter for the Court to determine. The Stipulations, copies of which are attached as exhibits to the Preliminary Objections, speak for themselves.

21. The Stipulations speak for themselves. It is admitted that the Stipulation provides for monetary payments to be made to the Townships if they assume maintenance responsibilities for the bridges; however, it is averred that any monetary payment would be made only if the property is turned over to the Municipalities.

22. This paragraph references Orders entered by the PUC, the legal effect of which is a matter for the Court to determine. No response is required by the County. However, it is admitted that the PUC did enter an Order on October 9, 1997 which addressed the Stipulations.

23. This paragraph refers to the PUC Order, which speaks for itself. The legal effect of such Order is a matter for the courts hence, no response is required. It is averred that such payment is to be made only if the property is transferred to the Townships.

24. This paragraph refers to the PUC order, which speaks for itself. The legal effect of such Order is a matter for the courts, hence no response is required. However, the County has announced that it will seek to substitute itself for NS and assume the responsibilities of the railroads to perform certain work as is required by the PUC and other governmental agencies, both Federal and State.

25. Admitted.

26. This paragraph contains conclusions of law to which no response is required. The jurisdiction of the PUC is as provided in the applicable statutes and regulations.

27. This paragraph contains conclusions of law to which no response is required. The jurisdictional authority of the PUC and the extent of that jurisdiction is as provided in the applicable statutes and regulations.

28. This paragraph contains conclusions of law to which no response is required. The obligations of the various parties is a matter to be determined by the courts. It is averred that the County has advised that it will assume the responsibilities of the railroads with respect to the disposition of the obligations imposed by applicable agencies as to the historic structures, bridges and crossings.

29. This paragraph contains conclusions of law to which no response is required. The County will take over all obligations of Conrail or PRR pursuant to the terms of the PUC Opinion and Order so as to preclude any duplication of obligations. The county has announced its intent to seek the authority to substitute itself in the PUC proceedings.

WHEREFORE, the County of Lancaster, as condemnee, respectfully requests this Court to dismiss these Preliminary Objections and to enter such additional and further relief as appropriate.

**NEW MATTER**

1. The County of Lancaster had advised Norfolk Southern/Pennsylvania LLC prior to commencement of the Eminent Domain proceedings and Norfolk/Southern/Pennsylvania Lines LLC did not object to the proceedings being instituted..

2. The property made subject to these Eminent Domain proceedings was not right-of-way but was owned in fee simple by Pennsylvania Lines, LLC pursuant to the deed transferring ownership of the premises.

3. The County of Lancaster has initiated steps to have itself substituted for Norfolk Southern in the STB and PUC proceedings.
4. The property made subject to these Eminent domain proceedings has been abandoned by Norfolk southern/Pennsylvania Lines, LLC.
5. The property made subject to these Eminent Domain proceedings was not in a public use at the time of the filing of the Declaration of Taking.
6. The possession of the property made subject to these Eminent Domain proceedings by the County is not an impediment to the resolution of the administrative proceedings before the STB and the PUC.

Respectfully submitted,

NIKOLAUS & HOHENADEL, LLP

By: \_\_\_\_\_

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No. CI-04-05422

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the Responses of County of Lancaster to Preliminary Objections to Declaration of Taking upon the following in the manner listed below which service satisfies the requirements of the Pennsylvania Rules of Civil Procedure.

Service By First-Class Mail

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CERTIFICATE OF SERVICE

I, Richard R. Wilson, Esq., attorney for Lancaster County, hereby certifies that on the 17<sup>th</sup> day of November, 2004, he did serve a true and correct copy of the foregoing Motion to Remove Historic Preservation Conditions and to Grant Abandonment Authority upon the following counsel of record, by first class mail, postage prepaid, at their offices as set forth below:

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